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SERVICE DATE - FEBRUARY 7, 2003

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-33 (Sub-No. 190X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN DUNN  
COUNTY, WI

Decided: February 6, 2003

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2-mile line of railroad, known as the Menomonie Industrial Lead, extending from milepost 0.90 near Stout Oak Street to milepost 2.90 near 12th Avenue West, in Dunn County, WI. Notice of the exemption was served and published in the Federal Register on January 10, 2003 (68 FR 1510-11). The exemption is scheduled to become effective on February 9, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on January 17, 2003. In the EA, SEA noted the concerns expressed by the Wisconsin Department of Transportation (WisDOT) regarding the possible impacts the proposed abandonment may have on the right-of-way. SEA also indicated that the Wisconsin Historical Society (SHPO) stated that there are structures on the line that could be eligible for inclusion in the National Register of Historic Places. In response to the concerns of WisDOT and SHPO, SEA recommended that the following conditions be imposed on any decision granting abandonment authority: (1) UP shall consult with WisDOT prior to salvage operations; and (2) UP shall retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f). Comments to the EA were due by February 3, 2003. No comments were received. Accordingly, the conditions originally recommended by SEA will be imposed.

On January 6, 2003, the City of Menomonie (the City), acting through the Wisconsin Department of Transportation, filed a request for issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) in order to negotiate with UP for acquisition of the right-of-way for use as a recreational trail. Under 49 CFR 1152.29, an interim trail user must submit a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, and acknowledge that the use of the right-of-way for trail purposes is subject to future

reactivation for rail service. The City has filed such a statement. In a response submitted on January 15, 2003, UP indicated its willingness to negotiate with the City.

Because the City's request complies with the requirements of 49 CFR 1152.29 and UP is willing to negotiate for trail use, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, UP may fully abandon the line. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on January 10, 2003, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below, for a period of 180 days from the service date of this decision and notice, and subject to the conditions that UP shall: (1) consult with WisDOT prior to salvage operations; and (2) retain its interest in and take no steps to alter the historic integrity of the line in its entirety until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f).
3. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
4. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.
5. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
6. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice (by August 6, 2003), interim trail use may be implemented. If no agreement is reached by that time, UP may fully abandon the line, provided the conditions imposed in this proceeding are met.

7. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary